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HB 1595, HD 1 RELATING TO ENVIRONMENTAL QUALITY COMMISSION ENVIRONMENTAL IMPACT STATEMENTS

Statement for
Senate Committee on
Ecology, Environment and Recreation
Public Hearing - 27 March 1981

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HB 1595, HD 1 would reinstate the existing statute authorizing the Environmental Quality Commission (EQC) to make rules and regulations for the State Environmental Impact Statement (EIS) system and adds a provision for administrative appeal to EQC for determinations made by agencies that an EIS is not required. Our statement on HB 1595, HD 1 does not represent an institutional position of the University of Hawaii.

As we pointed out in our earlier testimony on HB 1595, the continuation of EQC's responsibility for rules and regulations for the EIS system is appropriate. We are pleased to note the amendment to HB 1595 in HD 1 which reinstates the regulation responsibility deleted in HB 1595.

The second part of the bill calling for an administrative appeal to EQC was suggested by the Environmental Center in its 1978 report to Office of Environmental Quality Control (OEQC) on the Hawaii State EIS System. The Center reasoned, in this report, that if an applicant can appeal a determination as to the acceptability of his/her EIS (HRS 343-6) that the applicant should be entitled to appeal to the EQC on a determination whether an EIS is necessary or not. If the applicant has the right to appeal this type of determination then aggrieved parties should also have recourse to administrative appeal.

The authors of the Environmental Center report pointed out that the only recourse for those wishing to challenge a determination that an EIS is or is not required, is in the courts. This is an expensive and time-consuming process. In effect it may cause those who wish to challenge the appropriateness of this type of determination to not challenge thereby allowing an inadequate document to stand. By having a requirement for administrative appeal it would allow those people who are affected by the project (both applicant and concerned parties), and who do not have the funds for a court challenge, to challenge

the adequacy of a Negative Declaration or EIS preparation notice thereby giving them greater access to the EIS system. The added attention the process would receive could also prevent court cases from arising over the question of Negative Declaration and preparation notices.

The proposed amendment in HB 1595, HD 1, however, does not provide for an administrative appeal to the EQC of an agency determination that an EIS is required under HRS 343-5(b) and (c). If the intent of HB 1595, HD 1 is to incorporate an equitable appeal procedure into the rules and regulations of the EIS process, then the proposed amendment should be reworded to include consideration of the applicant. We note that HRS 343-6, paragraph 7 prescribes "procedures for informing the public of determinations that a statement is either required or not required under HRS 343-5(b) and (c)." Perhaps similar language could be incorporated into the appeal procedures in HRS 343-6, paragraph (8) for consistency. A broader administrative appeal procedure including the right to appeal a determination that a statement is or is not required would increase the effectiveness of the Hawaii State EIS system.